

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| United States of America, |) | CASE NO. 09 CR 145 |
| |) | 16 CV 1477 |
| Plaintiff-Respondent, |) | |
| |) | |
| Vs. |) | JUDGE PATRICIA A. GAUGHAN |
| |) | |
| Sidney Garth, |) | |
| |) | |
| Defendant-Petitioner. |) | <u>Memorandum of Opinion and Order</u> |

This matter is before the Court upon Petitioner’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Doc. 185). In his motion, Petitioner relies on *Johnson v. United States*, 135 S. Ct. 2551, 2563 (2015), to argue that he was unconstitutionally sentenced as a career offender under the residual clause of U.S.S.G. § 4B2(a)(2). In *Johnson*, the United States Supreme Court struck down the analogous residual clause of the Armed Career Criminal Act’s definition of a “violent felony” as void for vagueness. More recently, however, the Supreme Court held in *Beckles v. United States*, – U.S. –, – S. Ct. –, 2017 WL 855781 (U.S. Mar. 6, 2017), that the United States Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause. Thus, *Johnson*’s vagueness holding does not apply to the Sentencing Guideline provision under which Petitioner was sentenced. Petitioner’s motion is

therefore DENIED.

Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 3/20/17